

# FEDERAL COMMUNICATIONS COMMISSION

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In Re: ) MM DOCKET No.: 96-173  
CHAMELEON RADIO CORPORATION )  
Order to Show Cause Why )  
the License for Station )  
KFCC(AM), Bay City, Texas )  
Should Not be Revoked )  
Request for Extension of )  
Special Temporary Authority )

Volume: 2  
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Date: February 24, 1997

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## HERITAGE REPORTING CORPORATION

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Special Temporary Authority )

Courtroom 1, Room 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Monday,  
February 24, 1977

The parties met, pursuant to the notice of the  
Judge, at 9:59 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Administrative Law Judge

APPEARANCES:

On behalf of The Applicant:

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On Behalf of The FCC:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Michael Don Werlinger	--	80 125	--	--	--

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Mass Media Bureau:</u>			
1	20	(Withdrawn)	
2	22	(Withdrawn)	
3	23	23	
4	23	24	
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9	29	29	
10	29	29	
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13	31	32	
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17 A & B	76	76	
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20	40	41	
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Hearing Began: 9:59 a.m.      Hearing Ended: 4:15 p.m.

Recess Began: 12:49 p.m.      Recess Ended: 2:02 p.m.

P R O C E E D I N G S

JUDGE CHACHKIN: Please be seated.

Good morning. This proceeding concerns an order to show cause why the license of Station KFCC(AM) in Bay City, Texas, should not be revoked. Also, a request for extension of special temporary authority by Chameleon Radio Corporation.

The issues in this case read as follows: (1) To determine whether Chameleon Radio Corporation misrepresented or lacked candor to the Commission regarding the status of its license broadcast facility at Bay City, Texas, when requesting special temporary authority on April 21, 1995; (2) To determine whether Chameleon Radio Corporation lacked candor to the Commission regarding the construction of a tower at the Harris County site when filing its amended request for special temporary authority on May 2, 1995; and (3) To determine in light of the evidence adduced under the foregoing issues, whether Chameleon Radio Corporation possesses the requisite qualifications to be or remain a licensee of KFCC(AM), Bay City, Texas.

The order also specifies that the burden of proceeding of proof on the issues is on the Mass Media Bureau.

May I have the appearances on behalf of the parties? On behalf of Chameleon Broadcasting Corporation?

1 Chameleon Radio Corporation. Sorry.

2 MR. WERLINGER: It's Chameleon, Your Honor.

3 I am Don Werlinger. I am the president of  
4 Chameleon. I am here presenting the company pro se.

5 JUDGE CHACHKIN: All right. And on behalf of the  
6 Mass Media Bureau?

7 MR. ARONOWITZ: Alan Aronowitz and Kathy Berthot.

8 JUDGE CHACHKIN: Now, are there any preliminary  
9 matters before we get to taking evidence?

10 MR. ARONOWITZ: I have none.

11 MR. WERLINGER: I have none, Your Honor.

12 JUDGE CHACHKIN: You have none? All right, then  
13 let's proceed.

14 MR. ARONOWITZ: All right, consistent with our  
15 burden, I would like to introduce into evidence our  
16 exhibits, and we'll do so now.

17 JUDGE CHACHKIN: All right.

18 MR. ARONOWITZ: We exchanged exhibits on December  
19 24th, and with them here, I would introduce for -- I propose  
20 for Mass Media Bureau Exhibit 1 a letter dated September 3rd  
21 to Alan Aronowitz from Gene Bechtel, which consists of 19  
22 pages.

23 JUDGE CHACHKIN: From Alan Aronowitz or To Alan  
24 Aronowitz from Gene Bechtel. That would be Mass Media  
25 Bureau Exhibit 1.

1 JUDGE CHACHKIN: All right, the document described  
2 will be marked for identification as Mass Media Bureau  
3 Exhibit 1.

4 (The document referred to was  
5 marked for identification as  
6 Mass Media Bureau Exhibit No.  
7 1.)

8 JUDGE CHACHKIN: Will you tell me how that  
9 document is relevant to this proceeding?

10 As I see it, it consists for the most part of  
11 legal argument of counsel. I fail to see -- I mean, that is  
12 appropriate for post-findings. But what does legal  
13 arguments of counsel have to do with introducing evidence in  
14 this proceeding?

15 MR. ARONOWITZ: Well, in -- it reflect Mr.  
16 Werlinger's state of mind and it amplifies certain arguments  
17 and it amplifies his direct written testimony.

18 JUDGE CHACHKIN: Well, that's what I fail to see.  
19 I have read it over, and for the most part it consists of  
20 arguments of counsel rather than Mr. Werlinger's testimony  
21 as to what happened and the reasons for it.

22 Now, there is other documents here consisting of  
23 Mr. Werlinger's statements, but I am not prepared to  
24 introduce this unless you can show me, and we can go through  
25 each of these pages, and show me which is evidence which I



1 can rely on in making the record, and which is arguments of  
2 counsel, which obviously belong in, you know, conclusions.

3 I have no idea why this document is relevant to  
4 this proceeding. I have never seen in all the years that I  
5 have been a judge, I've ever seen a statement of this nature  
6 prepared by counsel, obviously who has no knowledge of the  
7 facts, and is not prepared to testify in this proceeding  
8 concerning the facts, is permitted to make his argument, 19-  
9 page argument, for the most part, and why that is being  
10 offered as evidence in connection with your case.

11 MR. ARONOWITZ: Your Honor, the matters in here  
12 are adequately addressed in Exhibit A of Chameleon's direct  
13 written case, so we can move on.

14 JUDGE CHACHKIN: All right, I'm -- all right.

15 So you are not offering it, and if you are  
16 offering it, I'm not going to receive it.

17 MR. ARONOWITZ: No, we will just move -- we will  
18 not offer it. We will move on.

19 JUDGE CHACHKIN: All right. Mass Media Bureau  
20 Exhibit 1, which has been identified is not being offered in  
21 evidence.

22 Exhibit 2, what is Exhibit 2?

23 MR. ARONOWITZ: Exhibit 2 is a declaration, a one-  
24 page declaration of Don Werlinger, signed by Mr. Werlinger  
25 on September 1.

1 JUDGE CHACHKIN: But that relates to Mr. Bechtel's  
2 statement, doesn't it?

3 MR. ARONOWITZ: Yes, it does.

4 JUDGE CHACHKIN: And I'm not going to receive it  
5 because that's not Mr. Werlinger's testimony.

6 So, Exhibit 2, I'll identify it for the record.

7 MR. ARONOWITZ: Okay. Yes, Your Honor.

8 JUDGE CHACHKIN: Exhibit 2 consists of a one-page  
9 declaration of Mr. Werlinger in which he states that "The  
10 statements made in Mr. Bechtel's statement are true." The  
11 document will be identified if it's being offered.

12 (The document referred to was  
13 marked for identification as  
14 Mass Media Bureau Exhibit No.  
15 2.)

16 JUDGE CHACHKIN: I don't know, is it being offered  
17 or not? I don't see how it could be offered without Mr.  
18 Bechtel's statement. By itself, it has no meaning.

19 MR. ARONOWITZ: Your Honor, we will move on. All  
20 right, Bureau Exhibit 2, which has been identified, is not  
21 being offered.

22 MR. ARONOWITZ: Exhibit 3 is a 26-page document,  
23 and it is an agreement of purchase and sale of assets, and  
24 we would like that identified as Exhibit 3.

25 JUDGE CHACHKIN: The document described is marked

1 for identification as Bureau Exhibit 3.

2 (The document referred to was  
3 marked for identification as  
4 Mass Media Bureau Exhibit No.  
5 3.)

6 JUDGE CHACHKIN: Is the document offered?

7 MR. ARONOWITZ: Yes, Your Honor.

8 JUDGE CHACHKIN: Any objection, Mr. Werlinger?

9 MR. WERLINGER: No, sir.

10 JUDGE CHACHKIN: All right, Bureau Exhibit 3 is  
11 received.

12 (The document referred to,  
13 having been previously marked  
14 for identification as Mass  
15 Media Bureau Exhibit No. 3,  
16 was received into evidence.)

17 MR. ARONOWITZ: Your Honor, next we would like to  
18 identify a 15-page document as Exhibit 4. And this is a  
19 lease agreement signed on April 20, 1995.

20 JUDGE CHACHKIN: All right, the document described  
21 is marked for identification as Bureau Exhibit 4.

22 (The document referred to was  
23 marked for identification as  
24 Mass Media Bureau Exhibit No.  
25 4.)

1 MR. ARONOWITZ: And would like to offer that into  
2 evidence.

3 JUDGE CHACHKIN: Any objection?

4 MR. WERLINGER: No, Your Honor.

5 JUDGE CHACHKIN: Bureau Exhibit 4 is received.

6 (The document referred to,  
7 having been previously marked  
8 for identification as Mass  
9 Media Bureau Exhibit No. 4,  
10 was received into evidence.)

11 MR. ARONOWITZ: We would like to identify as  
12 Exhibit No. 5 a 19-page letter dated August 4, 1995, to  
13 Larry Eads from Mr. Werlinger in response to a July 25,  
14 1995, letter of inquiry. We would like that identified as  
15 Mass Media Bureau Exhibit No. 5.

16 JUDGE CHACHKIN: The document described will be  
17 marked for identification as Bureau Exhibit 5.

18 (The document referred to was  
19 marked for identification as  
20 Mass Media Bureau Exhibit No.  
21 5.)

22 MR. ARONOWITZ: And we would like to offer that  
23 into evidence.

24 JUDGE CHACHKIN: Any objection?

25 MR. WERLINGER: No, Your Honor.

1 JUDGE CHACHKIN: Bureau Exhibit 5 is received.

2 (The document referred to,  
3 having been previously marked  
4 for identification as Mass  
5 Media Bureau Exhibit No. 5,  
6 was received into evidence.)

7 MR. ARONOWITZ: Your Honor, we would like to  
8 identify as Mass Media Bureau Exhibit 6 an April 21, 1995,  
9 application for special temporary authorization, a 10-page  
10 document. We would like that identified as Mass Media  
11 Bureau Exhibit 6.

12 JUDGE CHACHKIN: The document described will be  
13 marked for identification as Bureau Exhibit 6.

14 (The document referred to was  
15 marked for identification as  
16 Mass Media Bureau Exhibit No.  
17 6.)

18 MR. ARONOWITZ: And we offer that into evidence.

19 JUDGE CHACHKIN: Any objection?

20 MR. WERLINGER: No, Your Honor.

21 JUDGE CHACHKIN: Bureau Exhibit 6 is received.

22 //

23 //

24 //

25 //

1 (The document referred to,  
2 having been previously marked  
3 for identification as Mass  
4 Media Bureau Exhibit No. 6,  
5 was received into evidence.)

6 MR. ARONOWITZ: Your Honor, we have a three-page  
7 document, Statement of Don Werlinger, under 28 USC 1746,  
8 dated October 5, 1995. And we would like that identified as  
9 Mass Media Bureau Exhibit 7.

10 JUDGE CHACHKIN: The document described is marked  
11 for identification as Bureau Exhibit 7.

12 (The document referred to was  
13 marked for identification as  
14 Mass Media Bureau Exhibit No.  
15 7.)

16 MR. ARONOWITZ: And we would like to offer that  
17 into evidence?

18 JUDGE CHACHKIN: Any objection?

19 MR. WERLINGER: No, Your Honor.

20 JUDGE CHACHKIN: Bureau Exhibit 7 is received.

21 (The document referred to,  
22 having been previously marked  
23 for identification as Mass  
24 Media Bureau Exhibit No. 7,  
25 was received into evidence)

1 MR. ARONOWITZ: Your Honor, we have a one-page May  
2 5, 1995, letter grant of the application for special  
3 temporary authority. We would like that identified as Mass  
4 Media Bureau Exhibit 8.

5 JUDGE CHACHKIN: The document described is marked  
6 for identification as Bureau Exhibit 8.

7 (The document referred to was  
8 marked for identification as  
9 Mass Media Bureau Exhibit No.  
10 8.)

11 MR. ARONOWITZ: And we would like to offer that  
12 into evidence.

13 JUDGE CHACHKIN: Any objection?

14 MR. WERLINGER: No, Your Honor.

15 JUDGE CHACHKIN: Bureau Exhibit 8 is received.

16 (The document referred to,  
17 having been previously marked  
18 for identification as Mass  
19 Media Bureau Exhibit No. 8,  
20 was received into evidence.)

21 MR. ARONOWITZ: Your Honor, we would like to  
22 identify as Mass Media Bureau Exhibit 9 a May 12, 1995,  
23 letter superseding and correcting the May 5, 1995, letter  
24 grant of the application for special temporary authority, a  
25 one-page document. We would like that identified as Mass

1 Media Bureau Exhibit 9.

2 JUDGE CHACHKIN: The document described is marked  
3 for identification as Mass Media Bureau Exhibit 9.

4 (The document referred to was  
5 marked for identification as  
6 Mass Media Bureau Exhibit No.  
7 9.)

8 MR. ARONOWITZ: And we would like to offer that  
9 into evidence.

10 JUDGE CHACHKIN: Any objection?

11 MR. WERLINGER: No, Your Honor.

12 JUDGE CHACHKIN: Bureau Exhibit 9 is received.

13 (The document referred to,  
14 having been previously marked  
15 for identification as Mass  
16 Media Bureau Exhibit No. 9,  
17 was received into evidence.)

18 MR. ARONOWITZ: Your Honor, we would like to  
19 identify as Mass Media Bureau Exhibit 10 a May 18, 1995,  
20 letter rescinding special temporary authority, a one page  
21 document.

22 JUDGE CHACHKIN: The document described is marked  
23 for identification as Bureau Exhibit 10.)

24 //

25 //



1 (The document referred to was  
2 marked for identification as  
3 Mass Media Bureau Exhibit No.  
4 10.)

5 MR. ARONOWITZ: And we would like to offer that  
6 into evidence.

7 JUDGE CHACHKIN: Any objection?

8 MR. WERLINGER: No, Your Honor.

9 JUDGE CHACHKIN: Bureau 10 is received.

10 (The document referred to,  
11 having been previously marked  
12 for identification as Mass  
13 Media Bureau Exhibit No. 10,  
14 was received into evidence.)

15 MR. ARONOWITZ: Next is we would like to identify  
16 as Mass Media Bureau Exhibit 11, a notice to the Federal  
17 Aviation Administration of proposed construction or  
18 alteration, a one-page document.

19 JUDGE CHACHKIN: The document described is marked  
20 for identification as Bureau Exhibit 11.

21 (The document referred to was  
22 marked for identification as  
23 Mass Media Bureau Exhibit No.  
24 11.)

25 MR. ARONOWITZ: And we would like to introduce

1       that document into evidence.

2               JUDGE CHACHKIN:  Any objection?

3               MR. WERLINGER:  No, Your Honor.

4               JUDGE CHACHKIN:  Bureau Exhibit 11 is received.

5                               (The document referred to,  
6                               having been previously marked  
7                               for identification as Mass  
8                               Media Bureau Exhibit No. 11,  
9                               was received into evidence.)

10              MR. ARONOWITZ:  Next is a Federal Aviation  
11       Administration acknowledgement of the notice of proposed  
12       construction or alteration, a one-page document which we  
13       would like identified as Mass Media Bureau Exhibit 12.

14              JUDGE CHACHKIN:  The document described is marked  
15       for identification as Bureau Exhibit 12.

16                               (The document referred to was  
17                               marked for identification as  
18                               Mass Media Bureau Exhibit No.  
19                               12.)

20              MR. ARONOWITZ:  We would like to offer that into  
21       evidence.

22              JUDGE CHACHKIN:  Any objection?

23              MR. WERLINGER:  No, Your Honor.

24              JUDGE CHACHKIN:  Bureau Exhibit 12 is received.

25       //

1 (The document referred to,  
2 having been previously marked  
3 for identification as Mass  
4 Media Bureau Exhibit No. 12,  
5 was received into evidence.)

6 MR. ARONOWITZ: Next is a six-page narrative on  
7 KENR-KFCC operations under KENR Management Company, Inc. and  
8 Chameleon Radio Corporation, a six-page document we would  
9 like identified as Mass Media Bureau Exhibit 13.

10 JUDGE CHACHKIN: The document described is marked  
11 for identification as Bureau Exhibit 13.

12 (The document referred to was  
13 marked for identification as  
14 Mass Media Bureau Exhibit No.  
15 13.)

16 MR. ARONOWITZ: And we would like to offer that  
17 into evidence.

18 JUDGE CHACHKIN: Is this signed by anybody or  
19 anything? Where did this come from?

20 MR. ARONOWITZ: This was an attachment to -- this  
21 was an attachment offered by Mr. Werlinger as an exhibit to  
22 one of his submissions. I think it was the notice response  
23 to the letter of inquiry.

24 JUDGE CHACHKIN: Is that correct, Mr. Werlinger?  
25 Is this your attachment?

1 MR. WERLINGER: Yes, sir.

2 JUDGE CHACHKIN: All right. Any objection to its  
3 receipt into evidence?

4 MR. WERLINGER: No, sir.

5 JUDGE CHACHKIN: All right, Bureau Exhibit 13 is  
6 received.

7 (The document referred to,  
8 having been previously marked  
9 for identification as Mass  
10 Media Bureau Exhibit No. 13,  
11 was received into evidence.)

12 MR. ARONOWITZ: Next is a letter dated September  
13 8, 1995, to Don Werlinger from Larry Eads. It's a seven-  
14 page document that we would like identified as Mass Media  
15 Bureau Exhibit 14.

16 JUDGE CHACHKIN: The document described is marked  
17 for identification as Bureau Exhibit 14.

18 (The document referred to was  
19 marked for identification as  
20 Mass Media Bureau Exhibit No.  
21 14.)

22 MR. ARONOWITZ: We would like to offer that into  
23 evidence.

24 JUDGE CHACHKIN: Any objection?

25 MR. WERLINGER: No, Your Honor.

1 JUDGE CHACHKIN: Bureau Exhibit 14 is received.

2 (The document referred to,  
3 having been previously marked  
4 for identification as Mass  
5 Media Bureau Exhibit No. 14,  
6 was received into evidence.)

7 MR. ARONOWITZ: Next is a letter dated September  
8 22, 1995, to Roy Stewart from Don Werlinger. A four-page  
9 document we would like identified as Mass Media Bureau  
10 Exhibit 15.

11 JUDGE CHACHKIN: The document described is marked  
12 for identification as Bureau Exhibit 15.

13 (The document referred to was  
14 marked for identification as  
15 Mass Media Bureau Exhibit No.  
16 15.)

17 MR. ARONOWITZ: And we would like to introduce  
18 that into evidence.

19 JUDGE CHACHKIN: Any objection?

20 MR. WERLINGER: No, Your Honor.

21 JUDGE CHACHKIN: Bureau Exhibit 15 is received.

22 //

23 //

24 //

25 //

1 (The document referred to,  
2 having been previously marked  
3 for identification as Mass  
4 Media Bureau Exhibit No. 15,  
5 was received into evidence.)

6 MR. ARONOWITZ: Next is a letter dated September  
7 29, 1995, to Roy Stewart from Mr. Werlinger. It's a two-  
8 page document and we would like it identified as Mass Media  
9 Bureau Exhibit 16.

10 JUDGE CHACHKIN: The document described is marked  
11 for identification as Bureau Exhibit 16.

12 (The document referred to was  
13 marked for identification as  
14 Mass Media Bureau Exhibit No.  
15 16.)

16 MR. ARONOWITZ: And we would like to offer that  
17 into evidence.

18 JUDGE CHACHKIN: Any objection?

19 MR. WERLINGER: No, Your Honor.

20 JUDGE CHACHKIN: Bureau Exhibit 16 is received.

21 (The document referred to,  
22 having been previously marked  
23 for identification as Mass  
24 Media Bureau Exhibit No. 16,  
25 was received into evidence.)

1 MR. ARONOWITZ: Next is an eight-page document,  
2 the Mass Media Bureau's first request for admissions of fact  
3 and genuineness of documents. We would like that identified  
4 as Mass Media Bureau Exhibit 17.

5 JUDGE CHACHKIN: But where is the admissions?

6 All I see is the request. I don't see any  
7 admissions. Did I miss something? Does it follow? Wait a  
8 minute. Maybe I'm wrong.

9 Does it follow?

10 MR. ARONOWITZ: Seventeen.

11 JUDGE CHACHKIN: There isn't any admissions.

12 MR. ARONOWITZ: A moment, Your Honor.

13 (Pause.)

14 MR. ARONOWITZ: One more second, Your Honor.

15 JUDGE CHACHKIN: Yes.

16 (Pause.)

17 JUDGE CHACHKIN: I don't think you will find it in  
18 the exhibit.

19 MR. ARONOWITZ: I was just double checking, Your  
20 Honor, and I intended to include those within here as part  
21 of this attachment. I apparently have not.

22 JUDGE CHACHKIN: Why don't we just hold up your  
23 identification of this exhibit until you have the admissions  
24 also, and then we can take that up. At the break you can  
25 get a copy of it.

1 MR. ARONOWITZ: Thank you, Your Honor.

2 JUDGE CHACHKIN: And see if there is any  
3 objection.

4 MR. ARONOWITZ: Thank you, Your Honor.

5 So I will hold on that, and for the moment we will  
6 move on to -- we will move onto identify as Mass Media  
7 Bureau Exhibit 18 a May 2, 1995, amendment to the  
8 application for special temporary authority, which is a two-  
9 page document.

10 JUDGE CHACHKIN: The document described is marked  
11 for identification as Bureau Exhibit 18.

12 (The document referred to was  
13 marked for identification as  
14 Mass Media Bureau Exhibit No.  
15 18.)

16 MR. ARONOWITZ: And we would offer that into  
17 evidence.

18 JUDGE CHACHKIN: Any objection?

19 MR. WERLINGER: No, Your Honor.

20 JUDGE CHACHKIN: Bureau Exhibit 18 is received.

21 (The document referred to,  
22 having been previously marked  
23 for identification as Mass  
24 Media Bureau Exhibit No, 18,  
25 was received into evidence.)



1 MR. ARONOWITZ: Next is Exhibit 19, we would like  
2 it identified as Mass Media Bureau Exhibit 19, Chameleon --

3 JUDGE CHACHKIN: We don't have the interrogatories  
4 here. We just have the responses.

5 MR. ARONOWITZ: I think they are contained within  
6 there.

7 JUDGE CHACHKIN: All right. All right.

8 MR. ARONOWITZ: That was just economies of filing.  
9 The questions and answers are contained in the same  
10 document.

11 JUDGE CHACHKIN: All right.

12 MR. ARONOWITZ: Identified as Exhibit 19.

13 JUDGE CHACHKIN: All right, the document described  
14 is marked for identification as Bureau Exhibit 19.

15 (The document referred to was  
16 marked for identification as  
17 Mass Media Bureau Exhibit No.  
18 19.)

19 MR. ARONOWITZ: And we offer that into evidence.

20 JUDGE CHACHKIN: My problem with this is that this  
21 is not in accord with the Commissions rules for  
22 interrogatories. According to the rules for responses to  
23 interrogatories, nobody raised that question so obviously I  
24 didn't have to rule on it. But according to the rules it  
25 says under Section 1.323(b), "Each interrogatory shall be